IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4323 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANSILAL MAHADEVBHAI & CO.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4323 of 2002

Mr.Sheth for MR DR DHIMAR for Petitioner No. 1-3

Ms.Patel, AGPfor Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 17/07/2003

ORAL JUDGEMENT

Rule. Ms.Patel, Ld.AGP waives service of rule on behalf of respondents. With the consent of parties matter is taken up for final hearing.

2. The short question arise for consideration of this court is quantum of penalty imposed for alleged irregularities under Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 ("Control Order" for short).

3. The short facts of the case are that the petitioner was having licence under the Control Order. On 12.1.1999 inspection had taken place and certain irregularities were found as mentioned in the show cause notice. The petitioner replied to the said show cause notice and ultimately the Dist.Supply Officer, Surat passed the order on 11.11.1999 whereby he ordered for forfeiture of 50% of the amount deposited as per Clause 10 of Control Order. The matter was carried in appeal before the Dist.Collector and ultimately as per order, dated 13.3.2000 the Dist.Collector, Surat in appeal not only dismissed the appeal but further directed for forfeiture of the full amount, i.e. 100% of the amount deposited. The petitioner carried the matter in revision before the State Government and the State Govt as per order, dated 30.7.01 found that it is not established that the irregularities are proved except to the extent that irregularity No. 3 can be said to be not very much serious. However, the State Govt allowed the revision and set aside the impugned orders of the Dist.Collector and Dist.Supply Officer and under the circumstances, the present petition.

4. Mr.Sheth appearing for Mr.Dhimar on behalf of petitioners submitted, interalia, that considering the findings of facts recorded by the State Govt, at the most, the penalty could have been imposed to 25% of the amount deposited and not 50% as per the order of the State Govt. He submitted that the said irregularity for which the finding is against the petitioner is also not serious and therefore lenient view deserves to be called for.

5. On behalf of the respondent-State authorities, Ld.AGP Ms.Patel has supported the order of the State Govt.

6. Having considered the above and, more particularly, the perusal of the order passed by the State Govt shows that the State Govt has found that the irregularity No.1 does not appear in existence. It is also found that the explanation submitted for irregularity No.2 deserves to be accepted. It is also found that the irregularity No.4 can not be maintained.

However, so far as irregularity No.3 is concerned, it is found that it can not be said to be of high proportion or serious. Said irregularity for which the aforesaid finding is recorded by the State Govt is pertaining to non-maintenance of accounts for waste after extraction of oil which is popularly known as Khol. Therefore, it is apparent that nonmaintenance of account for the said item is only proved, but in the opinion of the State Govt itself such is not a serious matter.

7. This court in case of Panoli Intermediates Pvt.Ltd vs State of Gujarat in SCA No.8797/02 as per its decision dated 19.6.03 has observed at paras 8 & 9 as under:

" However, instead of remanding the matter to the authority concerned for rehearing and considering the matter afresh, I find that as per the decision of this court in the matter of M/s Govind Karsan and Co vs State of Gujarat & Ors reported in 1983 GLH 24 and as per the decision of the Division Bench of this court in the matter of Patel Ambaram Kuberbhai vs State of Gujarat & ors reported in 1998(2) GLH 533 when the licence is renewed with retrospective effect and the breach can be viewed leniently. If the matter is remanded to the authority it would result into unnecessary delay of the proceedings and consequently it may result into wastage of public time. Therefore, considering the peculiar circumstances of the case, I am inclined to consider the matter.

Even otherwise, on merits and on the question of forfeiture of goods the learned counsel appearing for the petitioner has submitted that if the penalty is substituted by 25% of the total goods, i.e. 50% of the goods seized, the petitioner would be satisfied. Therefore, I find that considering the facts and circumstances of the case that the penalty of forfeiture deserves to be modified in view of the peculiar facts that the licence is renewed with retrospective effect and if the strict interpretation is called for it can be said that on the date when the seizure took place on account of subsequent renewal of licence there was no serious breach."

8. In the above matter, where irregularities are completely said to be more serious in comparison to the irregularities in the present case, ultimately, 25% of

the total quantity seized was found to be just and reasonable. In the present case the penalty imposed is of 50% forfeiture of the deposited amount. It is true that the State Govt has taken into consideration the question of quantum of penalty to some extent, however, it appears that it has not applied its mind as to whether 50% forfeiture of the deposited amount is enough considering the facts and circumstances of the case or not. Hence, it can be said that the order of the State Govt to the extent of continuing with the 50% forfeiture of deposited amount is without proper application of mind. Even otherwise also, considering the facts and circumstances of the case, and the findings recorded by the State Govt the penalty of 50% forfeiture of deposited amount, in my view, can be said to be disproportionate to the quantum of irregularity.

9. Since the learned counsel for the parties has left the matter to the court on the question of quantum of penalty, instead of remanding the matter to the State Govt, I find it proper to modify the order passed by the State Govt by substituting the penalty to the extent of 25% forfeiture of amount deposited.

10. In view of the aforesaid discussion, the order of the State Govt shall stand modified by imposing pnalty of 25% forfeiture of amount deposited by the petitioner instead of 50%.

11. Petition partly is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

17.7.03 (JAYANT PATEL,J)